

JOHN H. FINFROCK.

JANUARY 26, 1897.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FENTON, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. R. 4676.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 4676) entitled "A bill to correct the military record of John H. Finfrock," having had the same under consideration, report it back favorably, and recommend its passage with amendment.

Attached hereto is the report of the Record and Pension Office of the War Department in reference to this case, which gives in detail the circumstances attending the dismissal of Captain Finfrock from the United States service, and states that the charge of desertion appearing against him in the orders in which he was dishonorably dismissed the service is erroneous, and that a notation to that effect has been placed upon the official records. But that "notwithstanding this action, the order of dismissal in the case of this officer having been carried into execution, it is beyond the power of an executive officer to revoke or modify it, or to set it aside, however unmerited or injurious that order may be deemed to have been."

Amend by adding as follows:

Provided, however, That no pay, bounty, or other allowances shall become due or payable by virtue of the passage of this act.

Case of John H. Finfrock, late captain Company F, Sixty-fourth Ohio Infantry Volunteers.

The records show that John H. Finfrock was mustered into service as second lieutenant, Company F, Sixty-fourth Ohio Infantry Volunteers, October 8, 1861, to serve three years, and was appointed captain, same company and regiment, November 12, 1861. No original muster-in roll for him as captain has been found. He appears to be properly accounted for on the muster rolls of the company to October 31, 1862. Subsequent to that date the company rolls report him as follows: December 31, 1862, "left the company and regiment at Scottsville, Ky., November 7, 1862; do not know the number or date of order or leave of absence, or if any was given him;" February 28, 1863, "dishonorably dismissed from the United States service, to date November 5, 1862, by order of Major-General Rosecrans, in Field Orders, No. 19, dated at Murfreesboro, Tenn., January 23, 1863;" company muster-out roll, dated December 10, 1864 (next roll on file), "dishonorably discharged from November 5, 1862, by order Major-General Rosecrans, in General Orders, No. 30, department Cumberland, * * * [roll torn] the march."

The returns of the regiment for November and December, 1862, show that he "left the regiment November 4, —, on surgeon's certificate; authority for absence not known."

The morning reports of the company show him as follows: November 7, 1862, "left regiment and company to go to hospital;" November 27, 1862, "in command of recruits for regiment, at Bowling Green, Louisville, Ky.;" December 10, 1862, "Captain Finfrock and recruits on duty in Bowling Green, Ky., by order of General Boyle."

No record of medical treatment in the case has been found.

In paragraph 2, Special Field Orders, No. 19, headquarters Department of the Cumberland, dated January 22, 1863, Captain Finfrock was dishonorably dismissed the service of the United States, to date from November 5, 1862, "for deserting his command while on the march." His dismissal was also announced in General Orders, No. 30, headquarters Department of the Cumberland, dated February 24, 1863.

The papers upon which the order of dismissal was based have not been found, but on December 8, 1862, the second lieutenant in command of Captain Finfrock's company made the following report on Finfrock's absence, stating that the report was made in compliance with an order from Major-General Halleck requiring company commanders to report all company officers who have been absent from their respective companies (without leave from the War Department) for a longer period of time than twenty days:

"Capt. John H. Finfrock, of Company F, Sixty-fourth Ohio Infantry, left the company and regiment near Scottsville, Ky., November 6, 1862. He said that he was sick, and that Colonel Ferguson, of the regiment, had given him verbal leave to fall back to Scottsville. On November 9, 1862, learned by letter that he was in Louisville, on his way to Mansfield, Ohio. On November 27, 1862, he wrote a letter, dated at Mansfield, Ohio, stating that he was there, felt pretty well, and that he would return to the regiment. I have no knowledge of Captain Finfrock's having any leave of absence. He is now absent, and has been since November 6, 1862. Lieutenant-Colonel McIlvain, commanding the regiment, informs me that he has no knowledge of Captain Finfrock's having any other than a verbal leave to fall back to Scottsville, Ky. This makes the third time that he has left the company and returned to Ohio. The second time he left the command May 14, 1862, and returned July 5, 1862."

This report was ultimately referred by General Rosecrans, on December 12, 1862, to the Adjutant-General, with the recommendation that Captain Finfrock be dismissed the service, and the report was received in the Adjutant-General's Office on December 22, 1862, where it appears to have been filed without action.

On February 13, 1863, Alex. McIlvain, lieutenant-colonel, commanding Sixty-fourth Ohio Infantry, addressed a letter to the assistant adjutant-general, Department of the Cumberland, requesting that Captain Finfrock be permitted to make a statement of his case, he claiming that great injustice had been done him by the publication of the orders in which he was dishonorably discharged the service. Lieutenant-Colonel McIlvain stated that Captain Finfrock had a certificate showing that he did not desert his command on the march, as charged in the discharge orders, and had other documents showing the reasons for his absence.

On February 13, 1863, Captain Finfrock made the following statement of his case:

About October 18, 1862, he applied for leave of absence, based on a surgeon's certificate by H. P. Anderson, assistant surgeon, Sixty-fourth Ohio Infantry, declaring him unfit for duty on account of varicocele. Although unable to walk, except in great pain, he remained with the regiment until it reached Scottsville, Ky., about November 5, 1862. [Captain Finfrock inclosed what purports to be a copy of Assistant Surgeon Anderson's certificate, dated October 28, 1862, but no record of such a certificate, except as shown by returns for November and December, 1862, has been found. The alleged copy of the certificate reads as follows:

* * * "Captain Finfrock * * * having applied for leave of absence, and being unable to march any farther, wishes to go to Lebanon, Ky., to await his papers."]

On November 7, 1862, being unable to march, the colonel of the regiment advised him to get to the railroad, promising to inform him of the result of his application for leave of absence. He procured transportation to Cave City, but, not finding any accommodation there, he proceeded to Louisville, Ky. From Louisville he went to his home at Mansfield, Ohio, having borrowed enough money to defray his expenses. He intended to return immediately to Louisville or Nashville and submit his case to some experienced surgeon. He arrived at Mansfield, Ohio, on November 14, he thinks, and, meeting Lieutenant Campbell, of his regiment, who was on recruiting service, he was informed by that officer that the superintendent of recruiting for Ohio desired some one to take some drafted militia to the Sixty-fourth Ohio Infantry. He consented to take charge of the men, as he could reach his regiment without marching, and remained at Mansfield for the purpose until December 1, 1862, when Special Order No. 8 was issued by Colonel Muhlenberg.

The following purports to be a copy of the order by Colonel Muhlenberg:

"Capt. John H. Finfrock * * * will proceed without delay to Nashville, Tenn.,

with a detachment of drafted militia assigned to his regiment. He will procure arms, etc., * * * at Columbus, Ohio.

"By order:

"FRANK P. MUHLENBERG,

"Captain Thirteenth United States Infantry, Mustering and Disbursing Officer."

No record of this order has been found. He obtained knapsacks, etc., at Camp Dennison, Ohio, and left that place for Louisville December 6, 1862, arriving at Louisville, Ky., December 7, 1862. He reported to Colonel Mundy, and was placed in Barracks No. 1 to await transportation. By direction of General Boyle he and his 187 men were placed in the First Convalescent Regiment, which regiment reported at Bowling Green, Ky., to Gen. R. S. Granger. He was retained on duty there until February 3, 1863, when his men were sent to his own regiment—the Sixty-fourth Ohio Infantry. He (Finfrock), being unable to travel, did not leave Bowling Green until February 9, 1863.

The commanding general commanding the Department of the Cumberland declined to modify the order of discharge.

There is a certificate on file by D. C. Carr, lieutenant, Sixty-fourth Ohio Infantry, acting adjutant First Convalescent Regiment, dated at headquarters, First Convalescent Regiment, Bowling Green, Ky., February 3, 1863, which sets forth that Captain Finfrock has been on duty at Bowling Green, Ky., in the First Convalescent Regiment since December 10, 1862. The certificate appears to have accompanied Captain Finfrock's letter of explanation of February 13, 1863. The signature to the certificate appears to be genuine.

In Special Order No. 48, paragraph 3, headquarters United States forces, Bowling Green, Ky., dated February 9, 1863, Captain Finfrock, "having recovered his health sufficiently to travel," was directed to proceed to Murfreesboro, Tenn., to rejoin his regiment.

On a muster roll of the field and company officers of the First Convalescent Regiment, Department of the Cumberland, dated at Bowling Green, Ky., for the months of November and December, 1862, Captain Finfrock is reported present.

The records of the State Volunteer Recruiting Service of Ohio furnish no information in the case, not covering transactions like that referred to in Captain Muhlenberg's order, and the records of Mansfield, Ohio, are not on file.

The records of Nashville, Tenn., Cincinnati, Ohio, Camp Dennison, Ohio, and Louisville, Ky., for November and December, 1862, furnish no information in the case.

On an index to a letter book, military commander, Columbus, Ohio, for November, 1862, appears the name J. W. Finfrock, but page 88 of the book to which the index entry refers is missing.

It has been determined by this Department that the charge of desertion appearing against Captain Finfrock in the orders in which he was dishonorably dismissed the service is erroneous, and a notation to that effect has been placed upon the official records.

Notwithstanding this action, the order of dismissal in the case of this officer having been carried into execution, it is beyond the power of an executive officer to revoke or modify it or to set it aside, however unmerited or injurious that order may be deemed to have been, and the attorney in the case has been so informed.

Official statement furnished to Hon. H. C. Van Voorhis, House of Representatives.
By authority of the Secretary of War:

F. C. AINSWORTH,

Colonel, United States Army, Chief Record and Pension Office.

RECORD AND PENSION OFFICE,
War Department, January 15, 1896.

